UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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ROBERT ALLEN, RENALDO NOREIGA & OMAR HOLDER,

Plaintiffs,

-against-

THE CITY OF NEW YORK, POLICE OFFICER ALBERT LLOYD, shield # 1200, SERGEANT JOHN KOCHER, shield # 2045, DETECTIVE WILLIAM UBIETA, shield # 4277, POLICE OFFICER JACOB GIANNELLI, shield # 20929, POLICE OFFICER MICHAEL DALBERO, shield # 168, POLICE OFFICER DRITON KRASNIQI, shield # 1161,

Defendants.

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SECOND AMENDED COMPLAINT

CV 11 3658 (ENV) (JO)

Jury Trial Demanded

PRELIMINARY STATEMENT

1. Plaintiffs bring this civil rights action against the City of New York and several New York City Police Officers seeking compensatory and punitive damages and attorney's fees and costs. Plaintiffs allege that defendants violated their rights under 42 U.S.C. § 1983, the Fourth Amendment to the United States Constitution and New York state law in connection with their arrests in Brooklyn on March 8, 2011. Plaintiff Allen also alleges a violation of his rights under federal and state law in connection with his arrest in Brooklyn on April 9, 2011.

JURISDICTION & VENUE

2. This action is brought pursuant to 42 U.S.C. § 1983 and the First and Fourth Amendments to the United States Constitution. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1343.

3. Plaintiffs invoke the supplemental jurisdiction of this Court pursuant to 28 U.S.C. § 1367 to hear and decide their New York state law claims of false arrest, assault, battery and vicarious liability which form part of the same case and controversy as their federal claims under Article III of the United States Constitution.

4. Notices of claim were duly filed with the City of New York within 90 day of the incidents that are the subjects of this lawsuit, more than 30 days have elapsed since such filing and the City has not offered to settle plaintiffs' state law claims.

5. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391(b) and (c) because a substantial part of the events giving rise to plaintiffs' claims occurred in this District and because some or all of the defendants reside in this District.

PARTIES

6. Plaintiffs are residents of Brooklyn.

7. The City of New York is a municipal corporation organized under the laws of the State of New York

8. The individual defendants are members of the New York City Police Department ("NYPD"). The defendant was acting under color of state law and in his capacity as a member of the NYPD at all relevant times. The defendant is liable for directly participating in the unlawful acts described herein and for failing to intervene to protect plaintiff from unconstitutional conduct. The defendant is sued in his individual capacity.

STATEMENT OF FACTS

A. Incident of March 8, 2011

9. On March 8, 2011, plaintiffs Allen, Noreiga and Holder were visiting their friend Stephen Allen who lived at 2164 Caton Avenue in Brooklyn in apartment # 3G.

10. At all relevant times, plaintiffs had not committed a crime or violation.

11. At approximately 9:30 p.m., Police Officer Albert Lloyd, Sergeant John Kocher and Detective William Ubieta falsely arrested plaintiffs, brought them into the hallway and handcuffed them excessively tight causing pain and bruising to their wrists.

12. The defendants refused plaintiffs' requests to loosen the cuffs.

13. Officers brought plaintiff to the 70th Precinct and then to Brooklyn Central Booking.

14. Plaintiffs were released from Brooklyn Central Booking on March 10, 2011, at approximately 2:00 a.m., because the District Attorney's Office declined prosecution.

15. Plaintiffs suffered damages as a result of defendants' actions. Plaintiffs suffered an unlawful detention, pain, physical injuries, emotional distress, fear, anxiety and humiliation.

B. Incident of April 9, 2011

16. On April 9, 2011, plaintiff Allen was in the vicinity of 2023 Caton Avenue in Brooklyn.

17. At all relevant times, plaintiff had not committed a crime or violation.

18. At approximately 5:20 p.m., Officers Jacob Giannelli, Michael Dalbero, and Driton Krasniqi arrested plaintiff for no reason and falsely alleged that plaintiff and others were blocking the free flow of pedestrian traffic for ten minutes and that pedestrians had to walk around plaintiff and the others to pass by.

19. Plaintiff exercised free speech during the incident by asking Officer Giannelli questions such as the reason why he was being arrested for no reason.

20. Officer Giannelli responded by verbally abusing plaintiff and by threatening to beat plaintiff if he asked another question. This threat caused plaintiff to stop asking questions.

21. Officers brought plaintiff to the 70th Precinct and then to Brooklyn Central Booking.

22. Officer Giannelli falsely charged plaintiff with disorderly conduct.

23. On April 10, 2011, at approximately 10:00 a.m., plaintiff appeared in court and the false charge was adjourned in contemplation of dismissal.

24. Plaintiff suffered damages as a result of defendants' actions. Plaintiff suffered an unlawful detention, an allergy attack in the precinct, emotional distress, fear, anxiety and humiliation.

FIRST CLAIM

(FALSE ARREST)

25. Plaintiffs repeat the foregoing allegations.

26. At all relevant times, plaintiffs did not commit a crime or violation.

27. Despite plaintiffs' innocence, the defendants arrested plaintiffs or failed to intervene to prevent their false arrests.

28. Accordingly, defendants are liable to plaintiffs under the Fourth Amendment for false arrest.

SECOND CLAIM

(UNREASONABLE FORCE)

29. Plaintiffs repeat the foregoing allegations.

30. Defendants' use of force upon plaintiffs on March 8, 2011 was objectively unreasonable and caused plaintiffs pain and injury.

31. Accordingly, defendants are liable to plaintiffs under the Fourth Amendment for using unreasonable force on them.

THIRD CLAIM

(VIOLATION OF RIGHT TO FREE SPEECH)

32 Plaintiffs repeat the foregoing allegations.

33. Plaintiff Allen exercised free speech during the April 9, 2011 incident as described herein.

34. Plaintiff Allen's use of free speech was a motivating factor in defendants' decision to threaten and arrest Allen.

35. Accordingly, defendants are liable to plaintiff Allen under the First Amendment for violating his right to free speech.

FOURTH CLAIM

(FAILURE TO INTERVENE)

36. Plaintiff repeats the foregoing allegations.

37. Defendants had a reasonable opportunity to prevent the violations of plaintiffs' constitutional rights, but they failed to intervene.

38. Accordingly, defendants are liable to plaintiff under the Constitution for failing to intervene to prevent the violation of plaintiff's federal rights.

FIFTH CLAIM

(*MONELL* CLAIM AGAINST THE CITY OF NEW YORK)

39. Plaintiffs repeat the foregoing allegations.

40. The City of New York is a "person" within the meaning of 42 U.S.C. § 1983.

41. The City of New York, through a policy, practice or custom, directly caused the constitutional violations suffered by plaintiffs.

42. Upon information and belief, the City of New York, at all relevant times, was aware that the defendants and other members of the NYPD are unfit officers who have previously committed acts similar to those alleged herein, have a propensity for unconstitutional conduct and/or have been inadequately trained.

43. Several members of the NYPD have been arrested and convicted of crimes for making false allegations and for corruption.

44. Former NYPD Commissioner Bernard Kerik was convicted of corruption-related crimes in federal and state court and served time in federal prison.

45. In 2011, former NYPD Officer Jerry Bowen was convicted of murder and attempted murder while under indictment for corruption.

46. In *Colon v. City of New York*, Nos. 09 CV 8, 09 CV 9 (JBW), 2009 WL 4263362 (E.D.N.Y. November 25, 2009), the federal court stated that an "[in]formal inquiry by the court and among the judges of this court, as well as knowledge of cases in other federal and state courts, has revealed anecdotal evidence of repeated, widespread falsification by arresting police officers of the New York City Police Department."

47. Despite the above, the City exercised deliberate indifference by failing to take remedial action. The City failed to properly train, retrain, supervise, discipline and monitor the defendants and other officers like them.

48. The City's failure to act resulted in the violation of plaintiffs' constitutional rights as described herein.

SIXTH CLAIM

(FALSE ARREST UNDER STATE LAW)

49. Plaintiffs repeat the foregoing allegations.

50. At all relevant times, plaintiffs did not commit a crime or violation.

51. Despite plaintiffs' innocence, the defendants arrested plaintiffs or failed to intervene to prevent their false arrests.

52. Accordingly, the defendants are liable to plaintiffs under New York state law for false arrest.

SEVENTH CLAIM

(ASSAULT)

53. Plaintiffs repeat the foregoing allegations.

54. Defendants' searches and tight handcuffing of plaintiffs placed them in fear of imminent harmful and offensive physical contacts which injured them.

55. Accordingly, defendants are liable to plaintiffs under New York state law for assault.

EIGHTH CLAIM

(BATTERY)

56. Plaintiffs repeat the foregoing allegations.

57. Defendants' searches and tight handcuffing of plaintiffs were offensive and nonconsensual physical contacts which injured them.

58. Accordingly, defendants are liable to plaintiffs under New York state law for battery.

NINTH CLAIM

(VICARIOUS LIABILITY CLAIM AGAINST CITY OF NEW YORK)

59. Plaintiffs repeat the foregoing allegations.

60. The individual defendants were acting within the scope of their employment as members of the NYPD when they committed the torts alleged herein.

61. Accordingly, the City of New York is vicariously liable to plaintiffs for false arrest, assault and battery.

WHEREFORE, plaintiffs demand a jury trial and the following relief jointly and severally against the defendants:

a. Compensatory damages in an amount to be determined by a jury;

b. Punitive damages in an amount to be determined by a jury;

c. Attorney's fees and costs;

d. Such other and further relief as the Court may deem just and proper.

DATED: December 12, 2011

/s/

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